

United States
Circuit Court of Appeals
For the Ninth Circuit. 7

C. I. T. CORPORATION, a Corporation,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Northern Division.

FILED
APR 28 1930
PAUL P. O'BRIEN,
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States, in and
for the Northern District of California.

No. 494—ADMIRALTY.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE GRAHAM TRUCK, Engine Number D105-
400B, License Number 162162, Its Tools and
Appurtenances,

Respondent.

C. I. T. CORPORATION,

Claimant.

STATEMENT OF CLERK, DISTRICT COURT.

PARTIES.

Libelant: United States of America.

Respondent: One Graham Truck, Engine Number
D105400B, License Number 162162, Its Tools
and Appurtenances.

Claimant: C. I. T. Corporation.

PROCTORS.

Libelant: GEORGE J. HATFIELD, Esq., United
States Attorney.

Respondent and Claimant: HINSDALE, OTIS &
JOHNSON, Esqs. [1*]

*Page-number appearing at the foot of page of original certified
Transcript of Record.

1928.

- Apr. 13. Filed libel for forfeiture of truck.
Issued monition for attachment of said truck, which said monition was afterwards on the 20th day of April, 1928, returned and filed with the following return of the United States Marshal endorsed thereon:

“In obedience to the within monition, I attached the Graham Truck therein described, on the 18th day of April, 1928, and have given due notice to all persons claiming the same that this court will, on the — day of — (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

FRED L. ESOLA,

U. S. Marshal.

By W. M. AHERN,

Deputy Marshal.

Dated April 18, 1928.”

- May 14. Proclamation made; ordered default entered.
June 13. Ordered default vacated; claimant to have 30 days in which to plead.

1929.

- Mar. 1. Filed demurrer and answer of C. I. T. Corporation.

- Mar. 11. The demurrer to the libel was heard on this day in the District Court of the United States in *the* for the Northern District of California, at the City of Sacramento, before the Honorable George M. Bourquin, District Judge for the District of Montana, designated to hold and holding said court, at which time the demurrer to the libel was overruled. [2]
- Nov. 15. The trial of this cause was heard this day before the Honorable A. F. St. Sure, District Judge, and after argument it was ordered that the cause be submitted on briefs to be filed.

1930.

- Jan. 22. Briefs having been filed and the cause being fully considered it was ordered that judgment be entered for libelant as prayed for in the libel.
- Jan. 30. Filed stipulation waiving jury trial.
Lodged findings requested by claimant.
- Feb. 3. Filed request for findings.
- Feb. 14. Filed order of forfeiture and sale.
- Feb. 24. Filed proposed bill of exceptions.
- Feb. 28. Filed *nunc pro tunc* as of Feb. 14, 1930, order denying request for special findings.
- Mar. 24. Filed proposed amendments to proposed bill of exceptions.
- Apr. 2. Filed stipulation *re* bill of exceptions.

- Apr. 4. Filed bill of exceptions.
- Apr. 5. Filed petition for appeal. Filed assignment of errors.
- Apr. 8. Filed order allowing appeal. Filed citation on appeal.
Filed praecipe for transcript on appeal.
Filed stipulation *re* preparation of record.
- Apr. 9. Filed undertaking on appeal. [3]



In the Northern Division of the United States District Court for the Northern District of California, First Division.

No. —.

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE GRAHAM TRUCK, Engine Number D105-400B, License Number 162162, Its Tools and Appurtenances,

Respondent.

LIBEL OF INFORMATION.

The United States of America, by GEORGE J. HATFIELD, United States Attorney for the Northern District of California, respectfully shows:

I.

That on or about the 17th day of March, 1928, in

the County of Yolo, State of California, and within the jurisdiction of the United States and this Honorable Court, Joseph R. Sheean, duly appointed and acting agent of the Bureau of Prohibition of the United States, seized a certain automobile, to wit: ONE GRAHAM TRUCK, Engine Number D105400B, License Number 162162, its tools and appurtenances, which was then and there found in the yard and enclosure of the premises known as the McGregory Ranch, four miles south of Westgate, Yolo County, California, in which said yard and enclosure there was also found the following articles and raw materials, to wit:

1-350-gallon alcohol still complete—10,000 gallons mash.

150 gallons jackass brandy—36 sacks corn sugar.

II.

That the said articles and raw materials were designed and possessed for the purpose and with the intent to manufacture intoxicating liquors of a kind subject to tax, and upon which there was then and there due and imposed certain taxes to the United States of America. [4]

III.

That the said taxes due and imposed as aforesaid had not been paid, and the said articles and raw materials were possessed and concealed in said yard and enclosure with intent to defraud the United States of the said taxes.

IV.

That the said possession and concealment of the said articles and raw materials was and is a violation of the provisions of Section 3450 of the Revised Statutes of the United States, and the said automobile, its tools and appurtenances are subject to condemnation, forfeiture, and sale.

WHEREFORE the United States Attorney prays that the usual process issue against the said automobile, its tools and appurtenances, and that all persons interested in and concerned with the said automobile, its tools and appurtenances, be cited to appear and show cause why such forfeiture should not be adjudged, and that all due proceedings being had therein, this Honorable Court may be pleased to condemn the said automobile, its tools and appurtenances, as forfeited to the United States, and that a judgment condemning the same may thereupon be entered, and that the said judgment may also order the United States Marshal to sell the said automobile, its tools and appurtenances, as provided by law; and for such other and further judgment and order as to the Court may seem proper in the premises.

Dated: April 11th, 1928.

GEO. J. HATFIELD,
United States Attorney.

Filed Apr. 13, 1928. [5]

[Same Court—Same Cause.]

DEMURRER AND ANSWER OF C. I. T.
CORPORATION.

DEMURRER.

Comes now the C. I. T. Corporation, a corporation, claimant of the Graham Truck, its tools and appurtenances, mentioned in the libel heretofore filed herein, and demurs to the said libel, and for ground of demurrer alleges that said libel does not state facts sufficient to constitute a cause of action or cause of forfeiture.

ANSWER.

Not waiving said demurrer, but at all times insisting thereon, for answer claimant alleges:

1.

That said claimant is, and was at all times hereinafter mentioned, a corporation, organized, existing and doing business under and by virtue of the laws of Delaware and doing business and duly authorized to do business in the State of California, and having its principal place of business at San Francisco, in said state.

2.

That this claimant has no knowledge or information sufficient to enable it to answer any one or more of the following allegations contained in said libel, and

placing its denial on that ground, it denies said allegations and each of them.

The allegations so denied are the following and each of them, to wit:

(a) Each and every, all and singular the allegations of Paragraph I of said libel.

(b) Each and every, all and singular the allegations of Paragraph II of said libel. [6]

(c) Each and every, all and singular the allegations of Paragraph III of said libel.

(d) Each and every, all and singular the allegations of Paragraph IV of said libel.

And further answering the allegations in said libel contained this claimant alleges as follows:

1.

That the allegations contained in Paragraph 1 of the foregoing answer are hereby repeated, adopted and made a part hereof.

2.

That said claimant is the owner of said Graham Truck, its tools and appurtenances, and entitled to the immediate possession thereof, and was the owner thereof at the time same were seized by the United States.

3.

That if at the time of the seizure of said truck, its tools and appurtenances aforesaid, or at any other time there was in said property or any part thereof, any of the articles or raw materials mentioned in the said libel, said articles and/or raw

materials had been there placed without the connivance, consent or knowledge of claimant.

WHEREFORE, having fully answered this claimant prays that it may be adjudged to be the owner and entitled to the immediate possession of said truck, tools and appurtenances, and that this libel be dismissed and said property ordered to be returned to him, and for other and further relief.

HINSDALE, OTIS & JOHNSON,
Attorneys for Claimant.

State of California,
County of Sacramento,—ss.

Gerald R. Johnson, being first duly sworn, deposes and says that he is a member of the firm of Hinsdale, Otis & Johnson, and is one of the attorneys for claimant in the above-entitled action; [7] that he has read the above and foregoing answer and that the same is true of his own knowledge except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true. That the said claimant is absent from the county where the attorneys for said claimant have their office; that the attorneys for said claimant have their office in the City of Sacramento, County of Sacramento, State of California. That he makes this verification for the reason that said claimant is absent from the County of Sacramento.

GERALD R. JOHNSON.

Subscribed and sworn to before me this 28 day of February, 1929.

[Seal] LILLIAN SOTO,
Notary Public in and for the County of Sacramento,
State of California.

Service of the within demurrer, etc., by copy admitted this 1st day of March, 1929.

ALBERT E. SHEETS,
Attorney for Pltff.

Filed Mar. 1, 1929. [8]

[Same Court—Same Cause.]

ORDER OF FORFEITURE AND SALE.

This cause having come on regularly for trial on the 15th day of November, 1929, and due proceedings had thereon,—

IT IS HEREBY ORDERED that the said truck, to wit: ONE GRAHAM TRUCK, Engine No. D105400B, License No. 162162, its tools and appurtenances, be forfeited to the United States of America, libelant herein, and sold at public auction by the United States Marshal for the Northern District of California, at the United States Postoffice Building, 7th and Stevenson Streets, City and County of San Francisco; and

IT IS FURTHER ORDERED that the United States Marshal from the proceeds of the sale of said automobile shall pay all storage charges and expenses incident to the seizure and sale, and shall

deposit the net proceeds with the Clerk of the above-entitled court to be by him covered into the Treasury of the United States, according to law.

Dated: February 14, 1930.

A. F. ST. SURE,
United States District Judge.

Filed Feb. 14, 1930. [9]

[Same Court—Same Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that this cause came on for trial on the libel and the claim and answer of C. I. T. Corporation on November 14, 1929, before the Court sitting without a jury—trial by jury having been expressly waived in writing by the parties hereto, which said waiver was duly filed with the Clerk hereof. Plaintiff appeared by Hon. Albert A. Sheets, Assistant United States Attorney and claimant C. I. T. Corporation by its attorneys, Messrs. Hinsdale, Otis and Johnson; all parties announced ready for trial, whereupon proceedings were had and evidence heard as follows:

Joseph R. Sheean, having been called and sworn as a witness on behalf of the United States, said claimant objected to the introduction of any testimony herein, on the ground that the libel does not state facts sufficient to constitute a cause of action. Said objection was overruled and said claimant duly excepted and it was announced by the Court that "it is understood that the objection of counsel hereto-

(Testimony of Joseph R. Sheean.)

fore made goes to all the testimony of this witness”
—whereupon said JOSEPH R. SHEEAN testified
as follows:

TESTIMONY OF JOSEPH R. SHEEAN, FOR
THE GOVERNMENT.

“I am, and on March 17, 1928, was a Federal Prohibition Officer. On that date I had occasion to visit premises in Yolo County on [10] which was located a still. At the Miagregoria ranch, four miles south of Westgate, in Yolo County, I found a 150-gallon alcohol plant complete, with 1000 gallons of mash complete and 150 gallons of jackass brandy, and such other supplies for a still. The still was enclosed within a large barn. Found the truck in the premises outside of the barn—about 50 yards. Around the barnyard was a one by six board fence. They had opened the gate and they started in the enclosure—the agents started to apprehend, but one got away and he apprehended the other—the front wheels (of the truck) were in the yard and the hind wheels just going across the line and when the agents came out of the barn the men attempted to get away and one did get away.

On the truck was some Argo sugar—that is used for the distillation of spirits—I found similar sugar at the still. It is my belief that no tax had been paid.

Cross-examination.

The truck was not moving when I first saw it. I

(Testimony of Joseph R. Sheean.)

was on the premises—it came on the premises afterwards. We waited for it, on information from one of the men in the still-room that the truck would arrive around midnight. The truck was partly in the enclosure when they tried to get away. The gate had been opened—I wasn't at the gate. I would say the truck was just about on the line—it was part over the line, and the rear part outside of this particular enclosure. The gate had been opened and they were proceeding in.

Redirect.

I found attendants on the place—Frank Poncini and Segundo Romini.

Recross.

Frank Poncini, Segundo Romini, Jim Gustalli and Pete Spinoglio were there and they were afterwards prosecuted in the State [11] courts and each was fined One Thousand Dollars.”

And plaintiff rested.

Whereupon the following proceedings were had, viz.: It was stipulated that:

“The automobile in question in this libel was at the time of its seizure and now is owned by the claimant here, C. I. T. Corporation, but had been by said owner delivered into the possession of one Louis Belli under and according to the terms of a conditional bill of sale wherein said C. I. T. Corporation has the title so reserved to claimant until the purchase price of \$1628 should have been fully paid.

Such purchase price has not been fully paid, in whole or at any time since the seizure herein, and the amount now due and unpaid thereon is the sum of \$825. And that

“The C. I. T. Corporation claimant in this suit did not have any knowledge as to the purpose for which this truck was being used or put,” and that if the president of the claimant corporation were present he would testify,—

“That before the purchase of said contract claimant herein investigated the standing of the said L. Belli as to his financial ability to carry out the terms of said aforementioned contract and as to whether or not the said L. Belli was a good moral risk. This investigation was conducted partly by claimant and partly by Messrs. Hooper and Holmes, an investigating agency of San Francisco, California. Inquiry was made of the Sacramento banks as to the financial status of the said L. Belli and the reports therefrom were satisfactory. It was ascertained that the said L. Belli had purchased other automotive equipment and had satisfactorily completed his contracts for the purchase thereof. Inquiries were made from neighbors living in close proximity to the said L. Belli and the reports emanating therefrom were good. [12] After said investigations and reports were obtained claimant herein determined that the said L. Belli was a good moral and financial risk.”

And claimant rested; and no evidence was introduced or offered in rebuttal.

Whereupon the cause was duly submitted and on,

to wit: the 3d day of February, 1930, said claimant made and filed its request for findings as follows:

“(I) The claimant C. I. T. Corporation hereby requests the Court to make findings of fact and conclusions of law herein.

(II) Libellant having failed to serve or file any findings or conclusions within the time prescribed by the rules of this court, or at all, said claimant hereby serves and files the following, and requests the Court to make them and each of them as findings of fact and conclusions of law herein, to wit:

REQUESTED FINDINGS OF FACT.

This cause came on to be heard the 14th day of November, 1929, by and before the Court sitting without a jury—a trial by jury having been expressly waived by written stipulation of the parties duly made and filed with the Clerk herein, on the libel and the intervening claim of C. I. T. Corporation duly filed herein. Libellant appeared by its attorney, Hon. Albert E. Sheets, Assistant United States Attorney, and said claimant C. I. T. Corporation by its attorneys, Messrs. Hinsdale, Otis & Johnson; both of said parties having announced ready for trial, evidence and argument was duly heard and the cause duly submitted and taken under advisement. The Court finds from the evidence the facts to be as follows, to wit:

I.

That all the allegations of Paragraph I of the libel herein are, and each of them is, true. [13]

II.

That the allegations of Paragraph II of the said libel are, and each of them is, untrue.

III.

That the allegations of Paragraph III of said libel are, and each of them is, untrue.

IV.

That the allegations of Paragraph V of said libel are, and each of them is, untrue.

V.

That the Graham Paige Truck mentioned in the libel was not wholly within the yard or enclosure in which were found the still, brandy and raw materials mentioned in said libel; but that said still, brandy and raw materials were found in a barn and said truck was found about 50 yards from said barn and partly within and partly without the yard enclosing said barn—the front wheels of said truck being within, and the rear wheels of said truck being without, said enclosure.

VI.

That said Graham Paige Truck was not used in or appertained to or had any connection with the still, brandy and/or raw materials mentioned in the libel.

VII.

That the still, brandy and raw materials mentioned in the libel were not possessed or concealed with intent to defraud the United States of any taxes.

VIII.

That said Graham Paige Truck is now, and at the time of its seizure was, owned by claimant, C. I. T. Corporation, and that said C. I. T. Corporation did not know or suspect and had no reason to know or suspect that said truck was being, or would be, used in the [14] accomplishment of any unlawful purpose or design or intent and was not guilty of any negligence in this regard.

IX.

That Joseph R. Wheean, the person who seized the Graham Paige Truck mentioned in the libel herein, was not a Collector or Deputy Collector of Internal Revenue nor was he a person who had been authorized by any Commissioner of Internal Revenue or by any Collector or Deputy Collector to make seizures.

And as flowing from the above findings of fact the Court makes the following

CONCLUSIONS OF LAW.

That the said Graham Paige Truck has not incurred forfeiture and that said claimant is entitled to a decree and judgment of this Court dismissing the libel herein and ordering said Truck to be returned to it.

Dated: February —, 1930.”

But the Court declined to make any of the findings requested and also declined to make any findings whatsoever in the case.

To which action of the Court claimant excepted as to each and every of said refusals, *seriatim*.

And thereafter the Court made and entered judgment in favor of plaintiff as prayed for to which said claimant duly excepted.

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS.

I, A. F. St. Sure, Judge of the above-entitled court, being the judge by and before whom the above-entitled cause was tried and determined, do hereby certify that the above and foregoing contains the evidence and all the evidence introduced or offered at the trial hereof and is a full, true and correct account of all the proceedings, rulings and exceptions had and/or taken herein. I further certify that said bill of exceptions was settled and filed herein [15] within the term at which said cause was tried and within the time and in the manner prescribed by law and the rules of this court; and I do further certify that same is a true and correct bill of exceptions herein and I do settle same as such and order it to be filed and to become a part of the record herein.

Dated: This 3d day of April, 1930.

A. F. St. SURE,
Judge.

Filed Apr. 4, 1930. [16]

[Same Court—Same Cause.]

PETITION FOR APPEAL.

To the Hon. A. F. St. SURE, Judge of the Above-entitled Court:

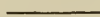
C. I. T. Corporation, above-named claimant, being aggrieved by the final judgment made and entered herein on February 14, 1930, prays that an appeal may be allowed from said judgment to the United States Circuit Court of Appeal for the Ninth Circuit, and, in connection therewith said petitioner herewith and hereby presents its assignment of errors.

Dated: This 5th day of April, 1930.

C. I. T. CORPORATION,
Claimant.

By HINSDALE, OTIS and JOHNSON,
Attorneys for Claimant.

Filed Apr. 5, 1930. [17]



[Same Court—Same Cause.]

ASSIGNMENT OF ERRORS.

Comes now C. I. T. Corporation, above-named claimant, and files and presents this its assignment of errors on its petition for appeal herewith filed herein, to wit:

I.

The Court erred in overruling the demurrer filed

herein and in holding that the libel herein stated facts sufficient to constitute a cause of action or forfeiture.

II.

The Court erred in overruling claimant's objection made at the commencement of the trial hereof to the introduction of any testimony herein—which said objection was on the ground then stated by claimant that the libel herein did not state facts sufficient to constitute a cause of action or forfeiture.

III.

The Court erred in denying claimant's request that the Court make findings of fact herein.

IV.

The Court erred in refusing to make Finding of Fact No. V requested by claimant; which said requested finding and conclusion of law was as follows:

“That the Graham Paige Truck mentioned in the libel was not wholly within the yard or enclosure in which were found the still, brandy and raw materials mentioned in said libel; but that said still, brandy and raw materials were found in a barn and said truck was found about 50 yards from said barn and partly within and *partly* without the yard enclosing said barn—the front wheels of said truck being within, and the rear wheels of said truck being without, said enclosure.” [18]

V.

The Court erred in refusing to make Finding of Fact No. VI requested by claimant; which said requested finding and conclusion of law was as follows:

“That said Graham Paige Truck was not used in or appertained to or had any connection with the still, brandy and/or raw materials mentioned in the libel.”

VI.

The Court erred in refusing to make Finding of Fact No. VII requested by claimant; which said requested finding and conclusion of law was as follows:

“That the still, brandy and raw materials mentioned in the libel were not possessed or concealed with intent to defraud the United States of any taxes.”

VII.

The Court erred in refusing to make Finding of Fact No. VIII requested by claimant; which said requested finding and conclusion of law was as follows:

“That said Graham Paige Truck is now, and at the time of its seizure was, owned by claimant, C. I. T. Corporation, and that said C. I. T. Corporation did not know or suspect and had no reason to know or suspect that said truck was being, or would be, used in the accomplishment of any unlawful purpose or design or

intent and was not guilty of any negligence in this regard.”

VIII.

The Court erred in refusing to make Finding of Fact No. IX requested by claimant; which said requested finding and conclusion of law was as follows:

“That Joseph R. Sheean, the person who seized the Graham Paige Truck mentioned in the libel herein was not a Collector or Deputy Collector of Internal Revenue nor was he a person who had been authorized by any Commissioner of Internal Revenue or by any Collector or Deputy Collector to make seizures.”
[19]

IX.

The Court erred in refusing to make conclusion of law as requested by claimant—which said requested conclusion was as follows:

“That the said Graham Paige Truck has not incurred forfeiture and that said claimant is entitled to a decree and judgment of this court dismissing the libel herein and ordering said truck to be returned to it.”

X.

The Court erred in rendering final judgment herein without having made findings of fact herein.

XI.

The Court erred in rendering final judgment in favor of libellant; said judgment is contrary to the

evidence and contrary to law in that the libel and also the uncontradicted evidence showed that the person who seized the truck, to wit, Joseph R. Sheean, was not a Collector or Deputy Collector of Internal Revenue nor a person specially authorized by the Commissioner of Internal Revenue, and also in that there was no evidence that the still, brandy and/or raw materials mentioned in the libel were possessed or concealed with any intent to defraud the United States of taxes, or otherwise, and in that there was no evidence that the seized truck was in the yard or enclosure where were found the still and/or the brandy and/or raw materials mentioned in the libel.

XII.

The Court erred in not rendering judgment herein dismissing said libel, and in favor of claimant herein, in that under the pleadings and the evidence adduced at the trial it was shown that the person who seized the truck, to wit, Joseph R. Sheean, was not a collector or deputy collector and was not a person specially authorized by the Commissioner of Internal Revenue, and also in that there was no evidence that the still, brandy or raw materials mentioned [20] in the libel was possessed or concealed with any intent to defraud the United States of taxes or otherwise, and in that there was no evidence that the seized truck was found in the yard or enclosure in which were found the said still, brandy or other *war* materials.

WHEREFORE, claimant prays that the judgment herein be reversed and that the above-entitled

court be ordered to enter a judgment herein for the dismissal of said libel and in favor of claimant.

Dated: This 5th day of April, 1930.

HINSDALE, OTIS and JOHNSON,
Attorneys for Claimant, C. I. T. Corporation.

Filed Apr. 5, 1930. [21]

[Same Court—Same Cause.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF COST BOND.

C. I. T. Corporation, above-named claimant, having filed and presented its petition for appeal herein and therewith its assignment of errors and the Court having considered same,—

ORDERED that the appeal prayed for in said petition for appeal be and the same is hereby allowed and that due citation on appeal issue herein; also

FURTHER ORDERED that the amount of the bond for costs on appeal be and the same is hereby fixed at \$250.00.

Dated: This 7 day of April, 1930.

A. F. St. SURE,
Judge.

Filed Apr. 8, 1930. [22]

[Same Court—Same Cause.]

UNDERTAKING ON APPEAL—COSTS ONLY.

WHEREAS, the C. I. T. Corporation, a corporation, claimant in the above-entitled action, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment entered February 14th, 1930, in said action in favor of the libellant for the forfeiture of the Graham Truck claimed by said C. I. T. Corporation, claimant in said action,—

NOW, THEREFORE, in consideration of the premises and of such appeal, the undersigned Maryland Casualty Company, a corporation organized and existing under the laws of the State of Maryland and duly authorized to transact a general surety business in the State of California, does hereby undertake and promise on the part of the appellant that said appellant will pay all damages and costs which may be awarded against it on the appeal, or on a dismissal thereof, not exceeding Three Hundred Dollars, to which amount it acknowledges itself bound.

This recognizance shall be deemed and construed to contain the “express agreement” for summary judgment, and execution thereon, mentioned in Rule No. 34 of the District Court.

IN WITNESS WHEREOF, the said surety has caused its corporate name and seal to be affixed by

its duly authorized officer at San Francisco, California, the 7th day of April, A. D. 1930.

MARYLAND CASUALTY COMPANY,

By W. G. KELSO,

Attorney-in-fact.

State of California,

City and County of San Francisco,—ss.

On the 7th day of April, in the year one thousand nine hundred and thirty, before me, Con T. Shea, a notary public in and for the City and County of San Francisco, personally appeared W. G. Kelso, [23] known to me to be the attorney-in-fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco the day and year in this certificate first above written.

[Seal]

CON T. SHEA,

Notary Public in and for the City and County of
San Francisco, State of California.

Filed Apr. 9, 1930. [24]

[Same Court—Same Cause.]

STIPULATION RE PREPARATION AND
PRINTING OF RECORD.

STIPULATED AND AGREED:

1. That in the transcript of the record to be prepared by the Clerk the paper first appearing shall be a copy of the libel and that the title of the court and cause shall be omitted from the copies of the subsequent papers and orders—the Clerk substituting in lieu thereof the words, “Same Court—Same Cause.”

2. That all endorsements and all full file markings shall be omitted—it being sufficient to say: Filed, together with a notation of the date when filed.

3. That the title of the case in the Circuit Court of Appeals may and shall be:

“C. I. T. Corporation, a Corporation, Claimant of
One Graham Truck, Its Tools and Appurtenances,

Appellant,

vs.

The United States of America,

Appellee.”

and that the printer shall so entitled the case on the cover of the printed record.

Dated: April 8th, 1930.

GEO. J. HATFIELD,
 United States Attorney,
 By ALBERT E. SHEETS,
 Assistant United States Attorney,
 Attorneys for Libellant-Appellee, United States.
 HINSDALE, OTIS & JOHNSON,
 Attorneys for Claimant-Appellant.

Filed Apr. 8, 1930. [25]

[Same Court—Same Cause.]

PRAECIPE FOR TRANSCRIPT ON APPEAL.

To the Clerk of the Above-entitled Court:

Please prepare transcript for appeal—embodying in said transcript copies of the following, viz.:

1. The libel.
2. The demurrer, claim and answer.
3. The judgment.
4. The bill of exceptions as signed.
5. The petition for order allowing appeal.
6. The assignment of errors.
7. Order allowing appeal.
8. Citation on appeal—(Original).
9. Bond for costs of appeal.
10. This praecipe.
11. Stipulation *re* transcript—filed April 8, 1930.

Dated: April —, 1930.

HINSDALE, OTIS & JOHNSON,
 Attorneys for Claimant-Appellant.

Filed Apr. 8, 1930. [26]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 26 pages, numbered from 1 to 26, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of United States vs. One Graham Truck, etc., No. 494—Adm., as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal, copy of which is embodied herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Eleven and 50/100 (\$11.50) Dollars, and that the same has been paid to me by the attorneys for the claimant herein.

Annexed hereto is the original citation on appeal.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, this 15th day of April, A. D. 1930.

[Seal]

WALTER B. MALING,

Clerk.

By F. M. Lampert,

Deputy Clerk. [27]

[Same Court—Same Cause.]

CITATION ON APPEAL.

The President of the United States, to the United States of America and to GEO. J. HATFIELD, United States Attorney, and to ALBERT E. SHEETS, Assistant United States Attorney, Attorneys for Above-named Libellant:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, on or before thirty days from date hereof, pursuant to order allowing appeal to said court filed in the Clerk's office of the Northern Division of the United States District Court for the Northern District of California at Sacramento, California, in that certain cause wherein you are libellant and C. I. T. Corporation is claimant; then and there to show cause if any there be why the final judgment of the last above named court made and entered in the above-entitled cause on the 14th day of February, 1930, should not be corrected and reversed and why speedy justice should not be had in the premises.

Dated: This 7 day of April, 1930.

A. F. ST. SURE,
United States District Judge.

Copy received and service accepted this 8th day of April, 1930.

GEO. J. HATFIELD,
United States Attorney,
By ALBERT E. SHEETS,
Assistant United States Attorney,
Attorneys for Libellant-Defendant in Error. [28]

Filed Apr. 8, 1930. [29]

[Endorsed]: No. 6125. United States Circuit Court of Appeals for the Ninth Circuit. C. I. T. Corporation, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed April 16, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

